

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

**RSA No.2118 of 1997
Date of Decision.29.05.2018**

Baldev Singh and others ...Appellants
Vs

Hari Singh (since deceased) through LR's and others ...Respondents

2. RSA No.2119 of 1997

Gurmel Singh(D) through LR's and others ...Appellants
Vs

Hari Singh and others ...Respondents

3. RSA No.2120 of 1997

Ranjit Singh and another ...Appellants
Vs

Hari Singh and others ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. G.S. Punia, Senior Advocate with
Ms. Jagriti Kalia, Advocate
for the appellant(s) in RSA No.2119 &2120 of 1997
and for the respondent(s) in RSA No.2118 of 1997.

Mr. M.L. Saggar, Senior Advocate with
Ms. Armaan Saggar, Advocate
for the appellant(s) in RSA No.2118 of 1997.

Mr. Kanwaljeet Singh, Senior Advocate with
Mr. Abhishek Bajaj, Advocate
for respondent(s) in RSA No.2119 & 2120 of 1997.

-.-

AMIT RAWAL J.

C.M. No.6695-C of 2018 in RSA No.2119 of 1997

The application for impleading the legal representatives
of deceased-Gurmel Singh is allowed subject to all just exceptions
and the legal representatives are ordered to be brought on record.

The amended memo of parties is taken on record and the

registry is directed to put it at appropriate place.

Main Cases

This order of mine shall dispose of three regular second appeals bearing Nos.2118, 2119 and 2120 of 1997. RSA No.2118 of 1997 has been filed at the instance of defendants whereas RSA Nos.2119 at the instance of defendant No.11 to 17 and 2120 of 1997 are the instance of defendant No.5 & 6 i.e. subsequent vendees. All these appeal arise from adjudication of the Civil Suit bearing No.153 of 1986 titled as 'Hari Singh and others Vs. Bir Singh and others’.

The aforementioned suit filed by the plaintiffs had been decreed by the trial Court by upholding the Will dated 20.04.1983 executed by Inder Singh and plaintiffs have been accorded ownership in possession of land whereas the sale deeds executed by Inder Singh i.e. Father of defendant No.1 and plaintiffs during his life time in favour of Gurdev kaur daughter of Bir Singh and subsequent sale deeds in favour of subsequent vendees have been set aside.

Before adverting to the rival contentions, the facts which emanate from pleadings are hereunder:-

Inder Singh was the owner of land situated in two villages namely Khanjarwal and Kamalpura. He was owner of 56 kanals 6 marlas of land situated in village Khanjarwal and half share of land measuring 101 kanals 2 marlas in village Kamalpura. According to the averments made in the plaint, he had four sons namely Hari Singh, Jagjit Singh, Bir Singh and Hamir Singh and one daughter. Hamir Singh pre-deceased Inder Singh. As per the Will dated 20.04.1983, he bequeathed the property situated at Village

Khanjarwal to plaintiffs Hari Singh and Jagjit Singh whereas in respect of half share in the land measuring 101 kanals 2 marlas at village Kamalpura in favour of Bir Singh and Hamir Singh stating that since Hamir Singh was insane, therefore, his share would revert back to Bir Singh after his death. During his life he executed sale deeds dated 6.8.1985, 2.8.1985 and 3.9.1984 in favour of defendant No.2, 3 and 4 i.e. sons and daughter of Bir Singh in respect of the land measuring 49 kanals 13 marlas. Gurdev Kaur sold the land measuring 14 kanals 6 marlas in favour of defendant No.5 and 6 and 16 kanals in favour of defendant No.12 to 17 vide sale deeds dated 15.10.1985 and 23.10.1987 whereas defendant No.2 sold 15 kanals 16 marlas in favour of defendant No.10 and 11 vide sale deed dated 27.10.1987. The appellants in other two regular second appeals are subsequent vendees having acquired title by virtue of sale deeds dated 27.10.1987 and 23.10.1987 and 15.10.1985 executed by defendant No.2 and 4. The plaintiffs laid the following claim in the suit:-

“Suit for a declaration that plaintiffs are the owners in possession of the land measuring 56K-6M denoted by Khewat/Khatoni No.9/21 bearing Rect. No.25 Killa No.5,6/1, 6/2, 6/3m7, 14, 15, 16, 17, 18/1, 25/1, 27m, Khasra No.134 and 240 situated in village Khanjarwal, Tehsil Jagraon Distt. Ludhiana as mentioned in the jamabandi for the year 1983-84 on the basis of oral and documentary evidence OR

In the alternative suit for joint possession after setting

aside the revocation deed dated 22.11.84 and unregistered Will dated 21.8.85 alleged to have been obtained illegally by fraud undue influence and misrepresentation in respect of registered will dated 20.4.83 executed by Inder Singh deceased which he meant to be operative after his death and did not revoke it or executed any other Will subsequent thereto and the mutation No.1569 decided on 21.2.86 has no binding effect on the rights of the plaintiffs.

(ii) Suit for joint possession of the land measuring 16K-18M out of the total land measuring 101K-2M in which deceased Inder Singh had half share denoted by Khata No.617/683, 622/689 bearing Rect. No.5 Killa No.16, 17, 24, 25 Rect. No.15 Kila No.4, 5/1 Rect. No.21 Kila No.16, 17m, 18, 22/2, 23, 24, 25 Rect. No.41 Kila No.2, 3, 4/1 Khasra No.270, 355, 476/3 as mentioned in the Jamabandi for the year 1981-82 situated at village Kamalpura Tehsil Jagraon which is wrongly claimed to be the ownership of defendants No.2 to 4 on the basis of fictitious sale deed dated 6.8.85, 2.8.85 and 3.9.84 respectively alleged to have been executed by Inder Singh deceased in their favour and to ignore the mutations sanctioned thereon on the basis of sale deeds as mentioned in the jamabandi attached. And further sale deed dated 15.10.85 executed by Gurdev Kaur defendants in favour of defendants 5 and 6 at mutation

No.8613 decided on 19.11.85 in favour of defendant No.5 and 6 by A.C. IInd Grade being illegal executed by a person having no power to alienate the property and further the transfers made pendente lite by defendants No.2 to 4 in favour of defendant No.10 to 17 by two sale deeds dated 23.10.87 and the third dated 27.10.87 and void and illegal against the rights of the plaintiffs and liable to be ignored.”

Inder Singh died on 26.8.1985. The suit aforementioned was filed in the year 1986 claiming aforementioned relief contending that the property at the hands of Inder Singh was ancestral by challenging the revocation deed dated 22.11.1984.

The defendants in the written statement contested the suit saying that Inder Singh during his life time vide revocation deed dated 22.11.1984 had revoked the Will dated 20.04.1983 registered on 26.04.1983 and executed the registered Will dated 21.08.1985 Ex.DB. Whereas the subsequent vendees claimed themselves to be bona fide purchasers for a valuable consideration and prayed for dismissal of the suit.

The trial Court on the basis of the pleadings framed the following issues:-

- “1. Whether Inder Singh had executed a valid Will dated 20.4.1983 in favour of the plaintiff, defendant No.1 and Hamir Singh? OPP*
- 2. Whether the revocation deed dated 20.11.1984 was executed under the undue influence by defendant No.1?*

OPP

3. Whether Inder Singh deceased executed a Will dated 21.8.1985 in favour of defendant No.1 and others?

4. Whether Inder Singh had executed valid sale deeds dated 6.8.1985, 2.8.1985 and 2.9.1984? OPD

5. Whether the suit land was joint Hindu Family property. If so, its effect? OPP

6. Whether the sale deed executed by Gurdev Kaur, defendant on 15.10.1985 is valid? OPU

7. Whether the defendants No.12 to 17 are bona fide purchasers for consideration and without notice? OPD

8. Relief.”

The plaintiffs in support of their claim examined Sukhchan Singh, deed writer, who had stated that he had seen the original Will and proved entry in the register maintained by him. Mohinder Singh and Ajit Singh, attesting witnesses of the Will were also examined.

Defendants examined Gurparshad Singh, Numberdar, who was a witness to the revocation deed and Banchan Singh, witness to the Will dated 21.08.1985.

The claim in the suit was that the property in both villages at the hands of Inder Singh was ancestral and an attempt was made to prove the nature and character of the property by bringing on record Ex.P15, jamabandi for the year 1935-36 pertaining to village Khanjarwal that the property was in the name of Mallu. It would be in the fitness of things to state that Inder Singh was son of Mallu son

of Lodhu Ram. Though Inder Singh had some other brothers but there is not dispute to that effect, for, neither of them are parties nor laid any claim, therefore, would be irrelevant for the adjudication of the present appeals. Rest of the revenue record i.e. Ex.P16, P18, P19 and P23, all the jamabandies showed the ownership of Inder Singh.

The trial Court on the basis of the evidence gave the finding in the following manner:-

(i) Upheld the Will dated 26.04.1983 but did not accept revocation deed dated 20.11.1984 holding it to be suffering from suspicious circumstance and also did not accept the Will dated 21.08.1985 propounded by defendant No.1.

(ii) In paragraph 15 and 16 held that the property in view of the admission of the parties was though ancestral but owing to the partition made by Inder Singh in the family, plaintiffs were put in cultivating possession of land at village Khanjarwal and Bir Singh and Hamir Singh were in possession of the property at Kamalpura.

(iii) In paragraph 18 while rendering finding on issue No.4, set aside the sale deeds *ibid* on the premise that there was no legal necessity.

(iv) On issue No.6, it set aside the subsequent sale deed dated 15.10.1985, Ex.D11 and sale deed dated 23.10.1987 executed by Gurdev Kaur in favour of subsequent vendees.

Three appeals bearing No.45 of 4.10.1991 titled as “Bir

Singh and others Vs. Hari Singh and others”, Civil Appeal bearing No.49 of 11.10.1991 titled as “Bara Singh and others Vs. Hari Singh and others” and Civil Appeal bearing No.51 of 7.10.1991 titled as “Ranjit Singh and others Vs. Hari Singh and others” were preferred by the defendants but all the three appeals have been dismissed. It is in these circumstances, present regular second appeals have been filed.

This Court heard the arguments and reserved the judgment on 01.05.2018.

Mr. G.S. Punia, learned Senior Counsel assisted by Ms. Jagriti Kalia appearing for the appellants in RSA No.2119 & 2120 of 1997 and for respondents in RSA No.2118 of 1997 and Mr. M.L. Saggar, learned Senior Counsel assisted by Ms. Armaan Saggar appearing for the appellants in RSA No.2118 of 1997 in support of their memorandum of appeals raised the following submissions:-

- (i) The judgments and decrees rendered by the trial Court and the lower Appellate Court are not sustainable in the eyes of law, for, the judgment of the trial Court is totally contradictory as in para 15 it held that the property was not ancestral but in the same breath in issue No.6 set aside the sale deeds executed by Inder Singh in favour of defendant No.2 to 4 vide three sale deeds in respect of land situated in Kamalpura because it was not for legal necessity and therefore, also set aside the subsequent sale deeds executed by Gurdev Kaur, who had acquired the title in the property by way

of sale deeds executed by Inder Singh in her favour for want of necessity. The revocation deed dated 20.11.1984 has also been held to be suffering from suspicious circumstances.

(ii) Both the Courts below have not adverted to the evidence of Bachan Singh, who unequivocally proved the contents of the Will dated 21.08.1985, Ex.DB, thus, there was a compliance of Section 68 of the Indian Evidence Act and Section 63(c) of the Indian Succession Act.

(iii) The lower Appellate Court relied upon the revocation deed Ex.DA to prove the Will dated 20.04.1983 but the said Will was never executed by Inder Singh in his sound disposing mind. It was not natural Will. The revocation of the deed was executed in the presence of Gurparshad Singh, Nambardar of village Kamalpura.

(iv) The purpose of revocation of the deed was proved as it was clearly stated that his three sons ceased to be looking and serving him.

(v) The property at the hands of Inder Singh was not ancestral but a self-acquired property, for, no excerpt as required in law has been brought on record in evidence. In support of the aforementioned contention, reliance has been laid to judgment rendered by this Court in

Banta Singh and others Vs. Phuman Singh and others

1972 PLJ 275. The plaintiff, Hari Singh had filed Civil Suit bearing No.233 of 1984 seeking injunction against Inder Singh for not selling, mortgage or alienate the property in dispute. In the plaint itself, it was pleaded that defendant No.1, Inder Singh had sold 17 kanals 17 marlas to Gurdev Kaur daughter of Bir Singh. Vide order dated 13.09.1985, Ex.D2, the suit was withdrawn and therefore, the present suit was barred under Order 2 Rule 2 CPC as no permission was granted to file the present suit.

(vi) No evidence had been led by the plaintiffs for cancellation/setting aside the sale deed dated 15.10.1985, for, Hari Singh was witness to the aforementioned sale deed.

(vii) Even according to the judgments and decrees of the Courts below, Bir Singh was entitled to remaining property of the village Kamalpura. Bir Singh died during the pendency of the appeal before the lower Appellate Court, therefore, Baldev Singh, Pritam Singh and Gurdev Kaur succeeded to the estate of Bir Singh, thus, the sale made by the defendants was protected under Section 43 of the Transfer of Property Act read with Section 13 of the Specific Relief Act, thus, urges this Court for setting aside the judgments and decrees under challenge.

Per contra, Mr. Kanwaljit Singh, learned Senior Counsel

assisted by Mr. Abhishek Bajaj representing the respondents in RSA No.2119 & 2120 of 1997 submitted that the concurrent finding of fact cannot be interfered unless and until there is gross illegality and perversity. The documentary evidence brought on record proved that the land at the hands of Inder Singh was ancestral as he inherited it from his forefathers and the plaintiffs being the 4th generation in lineage could challenge the sale deeds. The Will dated 21.08.1985, Ex.DB was doubtful because when Inder Singh had debarred all his sons from inheriting his property, there was then no reason in bequeathing his property in favour of his three sons. Moreover, the Will of 1955 was unregistered. The revocation deed had already been held to be suffering from suspicious circumstances. Since Hamir Singh was insane and was residing at Kamalpura, Inder Singh went to live at Kamalpura where Bir Singh was also residing, therefore, the plaintiffs had all apprehensions that Bir Singh may not transfer the land filed the suit. However, Hamir Singh died by that time when the revocation deed came but yet Inder Singh mentioned/scribed that none of his sons were serving him at that time. In the absence of the Will, the property would have gone to the sons and daughters. In fact, Inder Singh till his death resided at village Kamalpura and his last rites were also performed at Kamalpura. Ex.D9/Ex.DB dated 21.08.1985 again showed that he willed away the property amongst three sons and none else. Since Inder Singh was residing with Bir Singh, his over coming effect on his father could not be ruled out. The Courts below rightly discarded the arguments of the defendants while setting aside the sale deed dated 15.10.1985 de hors of the fact

that Hari Singh was witness to the aforementioned sale deed. The aforementioned sale deed was set aside, for, it was not for legal necessity but despite that land measuring 17 kanals 17 marlas was shown to be sold for a sum of ₹22,500/- when his other son Hamir Singh was sick. The amount of ₹22,500/- alleged to have been paid by Gurdev Kaur daughter of Bir Singh had not been proved to be utilized by Inder Singh in any way, therefore, there was no legal necessity, thus, urges this Court for upholding the judgments and decrees under challenge.

I have heard learned counsel for the parties, appraised the paper book and records of the Courts below. The uncontroverted facts are that plaintiffs Hari Singh, Jagjit Singh and defendant No.1 Bir Singh and insane Hamir Singh, who pre-deceased his father along with one daughter were siblings. Now the question which is posed before this Court is whether the intention and wish of Inder Singh as per the registered Will dated 26.04.1983 was tinkered with or not. For finding answer to the same, it would be relevant to give following observations:-

(i) Sale deeds dated 6.8.1985, 2.8.1985 and 3.9.1984 Ex.D5 to D7 are in favour of sons and daughters of Bir Singh in respect of land at Kamalpura and the sale deed dated 15.10.1985 executed by Gurdev Kaur in favour of subsequent vendees is also in respect of the same very village. In other words, Inder Singh was wise enough that he did not tinker or deal with the property bequeathed in favour of the plaintiffs situated in village

Khanjerwal i.e. 56 kanals 6 marlas, which had already been given to Hari Singh and Jagjit Singh by causing partition whereas other half share was given to Bir Singh and Hamir Singh i.e. $\frac{1}{2}$ share of land measuring 101 kanals 2 marlas at village Kamalpura. Since Hamir Singh was insane, therefore, after his death, his share was to go to Bir Singh. A Will comes into force only after demise of a testator. The sale deeds had been effected during the life time of the testator but the wish of the testator expressed in the Will was never deviated. He respected his wish as expressed in the registered Will dated 26.04.1983, which had been proved through the testimony of attesting witnesses Ajit Singh and Mohinder Singh.

(ii) Even if the finding of the trial Court is accepted vis-a-vis revocation deed dated 22.11.984, Ex.DA that the same was suffering from suspicious circumstance, no harm and prejudice had been caused to the plaintiffs with regard to their shares in the property at village Khanjarwal. The fall-out of all the facts leads to irresistible conclusion that plaintiffs were never affected, thus, question posed herein above is answered in favour of the defendants and against the plaintiffs.

(iii) The trial Court as noticed above in paragraph 15 held that nature and character of the property was not ancestral and during his life time, Inder Singh had

partitioned the same amongst his four sons in respect of land situated in village Khanjarwal and Kamalpura i.e. 56 kanals 6 marlas bequeathed in favour of plaintiffs and half share of 101 kanals 2 marlas at village Kamalpura in favour of Bir Singh and Hamir Singh but in the same breath while rendering the finding on issue No.4, it set aside the sale deeds executed by Inder Singh during his life time in favour of Gurdev Kaur daughter of Bir Singh for want of legal necessity, therefore, such findings are totally contradictory as there is no advertence to the revenue record, for, the genesis of the same was only on the admission in the written statement. The admission does not partake the character and nature of self-acquired property for treating it to be ancestral property.

(iv) On going through the revenue record, it is revealed that plaintiffs have only brought on record jamabandi whereby the property at the hands of Mallu at village Khanjarwal was inherited by Inder Singh. There is no evidence with regard to the property at Kamalpura that he inherited the same from his forefathers i.e. three generations and the plaintiffs being the 4th generation in lineage had right by birth. It is settled law that 4th generation can assert right in the property or land by birth. Reference is made to para 221, 21st Edition of Mulla's Hindu Law, which reads as under:-

“221. Ancestral Property. (1) Property inherited

from paternal ancestor. All property inherited by a male Hindu from his father, father's father or father's father's father, is ancestral property. The essential feature of ancestral property according to Mitakshara law is that the sons, grandsons and great-grandsons of the person who inherits it, acquire an interest and the rights attached to such property at the moment of their birth.....”

There is no revenue record brought on record to show that the land had been inherited from Ladhu to Mallu and Mallu to Inder Singh, thus, the trial Court could not have set aside the sale deeds holding it to be without legal necessity. Such findings, in my view, are totally fallacious, perverse and repugnant.

(v) Though the defendants attempted to prove on record Will dated 21.08.1985, Ex.DB by examining one of the attesting witness Bachan Singh whereby Inder Singh bequeathed entire property in favour of his three sons but it does not help anybody, for, Inder Singh during the life time as noticed above assured himself by executing the sale deeds to prevent any litigation with regard to the proof of registered Will dated 26.04.1983. In my view, filing of the suit at the instance of Hari Singh and Jagjit Singh, plaintiffs (since deceased) being represented by legal heirs, who had already been given land in respect of village Khanjarwal i.e. 56 kanals 6 marlas to which

defendants did not lay any counter-claim, was nothing but an act of aggrandizement which went unnoticed.

(vi) I cannot remain oblivious of the fact that plaintiffs had already sought injunction against Inder Singh by filing Civil Suit bearing No.233 of 1984 which was withdrawn later on, though statement was made to file fresh suit. Therefore, the objection of Mr. Punia with regard to maintainability of the suit is not sustainable, for, if a statement reflects the intention to file the suit afresh and order does not grant permission through it was mentioned in the statement, it would be implied permission, thus, the suit cannot be hit by Order 2 Rule 2 CPC.

As an upshot of my finding, the judgments and decrees of the Courts below are required to be set aside, for, no harm or prejudice has been caused to the plaintiffs, as they have already been given share in the land measuring 56 kanals 6 marlas at village Khanjarwal. This Court while admitting the appeals had stayed dispossession of the appellants, meaning thereby, they continued to enjoy the fruits of the property by virtue of sale deeds.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in **Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213**, wherein the proposition arose as to whether in view of the provisions of Section

97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure and decision thereof could be without framing the substantial questions of law. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262** on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

*“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of **Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)]** cannot be sustained and is thus overruled.” [at paras 27 - 29]”*

“27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of

India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned.

The findings of the Courts below upholding of the Will dated 20.04.1983 and setting aside of the Will dated 21.08.1985 are upheld but the findings with regard to setting aside the sale deeds executed by Inder Singh in favour of Gurdev Kaur and by Gurdev Kaur in favour of subsequent vendees are set aside.

Resultantly, all the appeals are allowed. Decree sheet be prepared accordingly.

(AMIT RAWAL)
JUDGE

May 29, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No